

FILED

2018 JAN 31 PM 1:19

CLERK OF SUPERIOR COURT

BY: fe

SCHMIDT, SETHI & AKMAJIAN
1790 East River Road
Suite 300
Tucson, Arizona 85718
FAX: (520) 790-1163

Dev K. Sethi
PCC #65271, SB# 018913
Direct Line: 520.545.1663
E-Mail: dsethi@azinjurylaw.com

Matthew F. Schmidt, SB# 028049
Direct Line: 520.545.1677
E-mail: mschmidt@azinjurylaw.com
Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCHISE

THOMAS ABRUZZO, natural father on
behalf of ASHLEY ABRUZZO AND
KRISTA ABRUZZO, minors,

Plaintiffs,

vs.

SIERRA VISTA UNIFIED SCHOOL
DISTRICT, a political subdivision of the
state of Arizona; DAVID F. FALCON and
JANE DOE FALCON, husband and wife;

Defendants.

No. **CV201800043**

COMPLAINT
(Tort, Non-Motor Vehicle)

Assigned to:

Plaintiffs for their complaint against Defendants alleges as follows:

1. PARTIES AND JURISDICTION

1. Plaintiff Thomas Abruzzo is the natural father of Plaintiffs Ashley and Krista Abruzzo and brings this suit on their behalf.
2. Ashley and Krista Abruzzo are minors under the age of 16.
3. At all times relevant to this action, Defendant David F. Falcon was acting in the

1 course and scope of his employment with Defendant Sierra Vista Unified School
2 District (SVUSD), where he worked as a school bus driver.

3 4. Defendant Sierra Vista Unified School District is a public school system and
4 political subdivision organized under the laws of the State of Arizona, with the
5 capacity to sue and be sued in the state of Arizona.

6 5. Huachuca Mountain Elementary School is a part of the Defendant SVUSD and
7 falls under the supervision and control of SVUSD.

8 6. Defendant SVUSD is vicariously liable for any acts of negligence caused by
9 Defendant Falcon and other SVUSD employees while acting in the course and
10 scope of their employment with Defendant SVUSD.

11 7. All acts and omissions relevant to this action occurred in the state of Arizona

12 8. Plaintiffs delivered a timely notice of claim upon Defendants pursuant to A.R.S.
13 § 12-821.01. Defendants have made no response to the notice of claim. More
14 than sixty days has expired since delivery of the notice of claim, and it is deemed
15 denied by operation of law.

16 9. Plaintiffs have complied with the notice of claim requirements under State law
17 perfecting their right to pursue these claims before this court.

18 10. Venue and jurisdiction is appropriate in this court.

19 II. FACTS

20 Plaintiff incorporates and realleges all aforementioned paragraphs as if fully set
21 forth herein.

22 11. In and before May of 2017, Ashley (13) and Krista (13), twins, were students at
23 Huachuca Mountain Elementary School and regularly rode the school bus with
24 70-year-old bus driver, Defendant David Falcon.

25 12. During a large portion of the bus route, it was just the three of them riding the
26 bus.

- 1 13. During this time, Mr. Falcon used the bus as a venue and tool to isolate, groom
2 and take advantage of the girls, using it as an instrumentality of harm.
- 3 14. From approximately May 19 to May 25, Mr. Falcon took advantage of Ashley
4 and Krista by using his position as the trusted bus driver and the privacy of the
5 bus to sexually abuse them on multiple occasions.
- 6 15. These actions included but were not limited to inappropriate comments,
7 touching, fondling private areas, holding, caressing and kissing on the mouth on
8 several occasions.
- 9 16. As a result of Defendants' conduct, Ashley and Krista have been seriously and
10 permanently injured.

11 **III. COUNT ONE—NEGLIGENCE**

12 Plaintiff incorporates and realleges all aforementioned paragraphs as if fully set forth
13 herein.

- 14 17. At all times relevant to this action, Defendant SVUSD and its employees,
15 including Mr. Falcon, owed their students, including Krista and Ashley Abruzzo,
16 a duty to exercise reasonable care in the operation of school activities, including
17 student transportation and supervision while students are being transported to
18 and from campus on SVUSD buses being driven by SVUSD employees,
19 complying with district policies, rules, protocols, regulations and procedures, as
20 well as state and federal law.
- 21 18. At all times relevant to this action, Defendant SVUSD and its employees,
22 including Mr. Falcon, owed their students, including Ashley and Krista Abruzzo,
23 a duty to exercise reasonable care in protecting the safety of its students and
24 keeping them from unreasonable risks of harm while under their supervision,
25 control and care, which includes supervision while students are being
26 transported to and from campus on SVUSD buses being driven by SVUSD

employees.

19. At all times relevant to this action, Defendant TUSD and its employees owed their students a duty to exercise reasonable care in addressing any injuries sustained by a student while under their supervision, control and care.

20. Defendants breached their duties to exercise reasonable care and fell below the ordinary standard of care as a result of Mr. Falcon's conduct.

21. Had SVUSD and its employees followed the ordinary standard of care, the Abruzzos would not have been injured.

22. Mr. Falcon's conduct occurred arising out of the operation and use of a motor vehicle.

23. As a direct and proximate result of Defendants' conduct, Krista and Ashley Abruzzo were and are substantially and permanently injured.

IV. DAMAGES

Plaintiff incorporates and realleges all aforementioned paragraphs as if fully set forth herein.

24. As a direct and proximate result of Defendants' conduct, Plaintiffs Krista and Ashley experienced and will continue to experience pain, discomfort, suffering, and anxiety in an amount to be proven at trial within the jurisdiction of this court.

25. As a further direct and proximate result of Defendants' conduct, Plaintiffs Krista and Ashley have and will require medical care, treatment, services and expenses rendered and reasonably probable to be incurred in the future in an amount to be proven at trial within the jurisdiction of this court.

26. As a further direct and proximate result of the aforementioned tortious conduct of Defendants' conduct, Plaintiffs Krista and Ashley have suffered loss of enjoyment


1 of life, or the participation in life's activities to the quality and extent normally
2 enjoyed before the injury.

3 WHEREFORE, Plaintiff prays for judgment in his favor and against Defendants, as
4 follows:

- 5
- 6 A. For past, present and future pain, discomfort, suffering, and anxiety;
- 7 B. For past, present and future medical care, treatment, services and expenses
8 rendered and reasonably probable to be incurred in the future;
- 9 C. For loss of enjoyment of life;
- 10 D. For punitive damages;
- 11 E. For costs incurred herein;
- 12 F. For pre-judgment interest on liquidated damages amounts;
- 13 G. For post-judgment interest on the entire judgment amount; and,
- 14 H. For such other and further relief as the Court deems just in this action.
- 15
- 16

17 DATED this 29th day of January, 2018.

18 SCHMIDT & SETHI & AKMAJIAN

19
20 By 
21 Dev K. Sethi
22 Matthew F. Schmidt
23 Attorneys for Plaintiff
24
25
26